

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
441 4th Street, NW, Suite 540-S
Washington, DC 20001-2714

I.U.

Petitioner,

v.

DISTRICT OF COLUMBIA
DEPARTMENT OF HUMAN SERVICES
Respondent

Case No.: 2009-OAH-DHS-0000036

FINAL ORDER

I. Introduction

A hearing was held in this case on January 19, 2010. The record closed on February 5, 2010. For the following reasons, I conclude:

(1) Based on the information presented by Petitioner I.U. in his October 22, 2009 application for Food Stamps ("FS") benefits, Respondent District of Columbia Department of Human Services made a slight error in determining that Mr. U. was not eligible for FS benefits for October 2009, but that he was eligible for \$28 in monthly FS benefits beginning November 2009. In fact he was eligible for \$29 per month beginning November 2009; and

(2) As of January 21, 2010, Mr. U. has presented additional information showing that his business net income after expenses may have been only \$73 for the entire calendar year 2009.

I will reverse and remand this case. Respondent shall issue corrected FS benefits of \$29 per month for the period, November 2009 through January 2010. I will remand this case for

Respondent to recalculate Mr. U.'s FS eligibility beginning February 2010, after considering his additional information concerning his self-employment income.

II. Procedural History

On November 18, 2009, Mr. U. filed a hearing request, regarding Respondent's administration of the FS program. On December 14, 2009, this administrative court issued a Scheduling Order scheduling a hearing for January 19, 2010 at 12:30 PM.

At the January 19, 2010 hearing, Mr. U. appeared on his own behalf. Richard Walker, Policy Analyst, appeared on behalf of Respondent.

The hearing began with Mr. U. stating his claim for hearing. According to Mr. U., he applied for FS benefits for a household of one person in October 2009, and in November 2009, Respondent granted him \$28 per month in FS benefits beginning November 2009.

Mr. U. claims that Respondent committed the following errors: (1) Respondent miscalculated his personal income from self-employment in determining his FS eligibility; (2) Respondent failed to consider certain personal expenses as "excess shelter expenses"; (3) Respondent failed to grant him any FS benefits for the month of October 2009; (4) for the subsequent months beginning November 2009, Respondent failed to grant him the full amount of \$200 in FS benefits to which he was entitled; and (5) Respondent failed to consider Mr. U.'s actual needs for FS benefits, and that ultimately Respondent should have granted him an allotment of FS benefits over the maximum benefit amount.

Mr. Walker responded that Respondent has correctly determined Mr. U.'s FS entitlement under the federal regulations, based on the information submitted by Mr. U. According to Mr.

Walker: (1) Mr. U. provided the information that established his self-employment income and gift income from a relative; (2) Respondent was not permitted to consider the personal expenses claimed by Mr. U. as shelter expenses, and even if it had, Mr. U.'s expenses did not exceed one-half of his income after certain allowed deductions, and therefore he was not entitled to any "excess shelter expense"; (3) since Mr. U. was entitled to receive less than \$10 in FS benefits for October 2009, Respondent was not permitted under federal law to issue him any FS benefits for that month; (4) for the subsequent months, Respondent properly applied the calculations required under federal law and determined that Mr. U. was only entitled to receive \$28 per month in FS benefits; and (5) Respondent was not permitted to grant FS benefits in excess of the maximum FS benefit for a household of one person.

Respondent presented its evidence first. Mr. Walker testified and introduced three exhibits that were admitted into evidence. Mr. U. then presented his evidence. He testified on his own behalf and introduced one exhibit that was admitted into evidence.

The following exhibits were admitted into evidence:

Respondent's Exhibit ("RX") 200 -	Administrative Review Report, dated January 5, 2010, with twelve (12) pages of attachments.
RX 201 -	Mr. U.'s typed statement of Ekrete U., dated September 8, 2009.
RX 202 -	Mr. U.'s handwritten statement, dated October 22, 2009.
Petitioner's Exhibit ("PX") 100 -	Mr. U.'s four-page statement, dated January 9, 2010, with seven (7) pages of attachments.

During the hearing, Mr. U. stated that he had additional exhibits, including his income tax returns for the past two years, that showed he actually earned \$73 per year from his business enterprise. Mr. U. conceded that he did not provide these exhibits to Respondent.¹

The parties agreed to leave the record open for a period of time for this purpose. However, Mr. U. does not have ready access to a fax machine. Therefore, he was given permission to send and receive copies of exhibits to and from Respondent by first-class mail to the representatives listed in the Certificate of Service. Respondent was given an extended deadline for response, to allow for the fact that it will receive its copies of the exhibits by mail.

On January 21, 2010, I issued an Order After Hearing, which set forth the following deadlines:

(1) On or before January 26, 2010, Mr. U. may file additional exhibits and serve copies of these exhibits on Respondent; and

(2) On or before February 5, 2010, Respondent may file additional exhibits and serve copies of these exhibits on Mr. U.

Mr. U. timely filed the following two exhibits, which were admitted into evidence:

PX 101 -	Mr. U.'s three-page statement, dated January 21, 2010, with seventeen (17) pages of attachments, including Mr. U.'s 2009 federal income tax return.
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PX 102 -	Mr. U.'s five-page statement, dated January 26, 2010, with two pages of attachments, consisting of his request for hearing.
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¹ Indeed, Mr. U. could not have provided his 2009 income tax returns to Respondent because he had not prepared them until January 2010, three months after he applied for FS benefits.

As required in the Order After Hearing, Mr. U. included certificates of services stating that he had mailed a copy of the exhibits to Respondent's representatives.

Respondent did not submit any additional exhibits into evidence. The record closed on February 5, 2010.

Based upon the testimony of the parties, my evaluation of their credibility, and the exhibits admitted into evidence, I now make the following findings of fact and conclusions of law.

III. Findings of Fact

A. Mr. U.'s Application and Information Provided to Respondent

On October 22, 2009, Mr. U. applied for FS benefits for a household of one person. At that time, Mr. U. submitted two statements concerning his monthly income.

In his handwritten statement, RX 202, Mr. U. stated: "This is to certify I get paid at random average out about \$204.00/month consider self employment wages."

The written statement signed by Ekrete U., RX 201, stated:

This note is to confirm that Ani U., Ekrete U. and Dorothy U. have provides thus far \$3141.37 before expenses between 5/12/2009 and 9/4/2009.

The amounts were paid on behalf of Isang U. on 5/9/2009 (\$391.37), 5/11/2009 (\$550 security deposit), 5/29/2009 (\$550), 6/26/2009 (\$550.00), 7/29/2009 (\$550) and 9/3/2009 (550).

If you have any questions, you can call me at [telephone number provided].

B. Respondent's Determination of Mr. U.'s FS Benefits

Based on these two statements, Respondent found that Mr. U. received \$204.00 per month in self-employment wages, RX 202, and \$550 per month in unearned income, RX 201. Mr. U. did not report any rent or utility costs, nor did he report any medical expenses or child care expenses.

Respondent determined that Mr. U. was entitled to receive \$28 per month in FS benefits, beginning November 2009. Respondent also determined that Mr. U. was not entitled to receive any FS benefits for October 2009, because his prorated FS benefit for the period, October 22-31, 2009, was less than \$10.

On October 28, 2009, Respondent sent to Mr. U. a Food Stamp Approval notice (the "Notice"), informing Mr. U. of Respondent's determinations. RX 200 pp. 7-9.

For all months except October 2009, Respondent calculated Mr. U.'s monthly FS income eligibility using the following calculation chart, RX 200 p. 12:

FS MONTHLY ELIGIBILITY CALCULATION BEGINNING NOVEMBER 2009

Gross Countable Earned Income	\$204.00
Earned Income Deduction 20% of Earned	- <u>\$40.80</u>
Balance Gross Earned Income	\$163.20
 Gross Countable Unearned Income	 \$550.00
Total of Gross Earned and Unearned Income	\$713.20
Standard Deduction (incorrect)	- <u>\$141.00</u>
Excess Medical Deduction	\$0
Dependent Care	\$0
Child Support Paid	\$0
Subtotal	\$572.20
Excess Shelter Deduction	
a. Total Shelter Expenses	\$0
b. ½ of Subtotal income	\$286.10
c. Excess Shelter Deduction (no amount over ½)	\$0

Net Countable Income	\$572.20
Multiply Net Countable Income by 30%	\$171.66
Reduction from Maximum Allotment	\$171.66
Maximum Allotment for Household of One	\$200.00
Monthly Allotment (Maximum Allotment minus Reduction)	\$28.34
Monthly Allotment (Rounded down to nearest dollar)	\$28.00

For the month of October 2009, Respondent conducted the same calculations for the entire month. Respondent then pro-rated the monthly allotment by multiplying the \$28.00 monthly allotment by ten days (October 22-31), divided by 31 days in the month of October. The total was \$9.03. Since this was under \$10, Respondent did not award any FS benefits to Mr. U. for October 2009.

Respondent made one error in calculating Mr. U.'s FS benefits: The United States Department of Agriculture ("USDA") has established a standard deduction of \$144 per month for a household of one person, not \$141 as reflected in Respondent's calculation worksheet.

C. Recalculation of FS Eligibility After Considering Error

If one applies the correct standard deduction, Mr. U.'s eligibility is calculated as follows:

CORRECTED CALCULATION BEGINNING NOVEMBER 2009

Gross Countable Earned Income	\$204.00
Earned Income Deduction 20% of Earned	<u>- \$40.80</u>
Balance Gross Earned Income	\$163.20
Gross Countable Unearned Income	\$550.00
Total of Gross Earned and Unearned Income	\$713.20

Standard Deduction (corrected)	-\$144.00
Excess Medical Deduction	\$0
Dependent Care	\$0
Child Support Paid	\$0
Subtotal	\$569.20
Excess Shelter Deduction	
d. Total Shelter Expenses	\$0
e. ½ of Subtotal income	\$286.10
f. Excess Shelter Deduction (no amount over ½)	\$0
Net Countable Income	\$569.20
 Multiply Net Countable Income by 30%	 \$170.76
 Reduction from Maximum Allotment	 \$170.76
 Maximum Allotment for Household of One	 \$200.00
 Monthly Allotment (Maximum Allotment minus Reduction)	 \$29.24
 Monthly Allotment (Rounded down to nearest dollar)	 \$29.00

For the month of October 2009, the corrected calculation pro-rates the monthly allotment by multiplying the \$29.00 monthly allotment by ten days (October 22-31), divided by 31 days in the month of October. The total was \$9.35. Since this was still under \$10, Respondent properly did not award any FS benefits to Mr. U. for October 2009.

D. Mr. U.'s Additional Information

On January 21, 2010, Mr. U. submitted his federal income tax return for 2009 into the record of this hearing, PX 101, and he provided a copy to Respondent. According to the return, Mr. U. received self-employment income of only \$73 for the entire calendar year 2009.

IV. Conclusions of Law

Under the FS program,² the maximum allotment level is based on the Thrifty Food Plan (“TFP”). 7 CFR § 273.10(e)(4); 7 CFR § 271.2. The level is determined on an annual basis by the USDA, as of October 1. In addition, under the TFP, the gross income standard is set at 130% of the federal poverty level for the applicable household, § 273.9(a)(1), and the net income standard is set at 100% of the federal poverty level. § 273.10(a). The income standards, standard deductions, and maximum allotment levels are listed on the USDA website (www.fns.usda.gov/fps) TFP Table.

Of particular importance here, the USDA has established a standard deduction of \$144 and a maximum allotment of \$200 per month for a household of one person.

In this case, there is no question that Mr. U. met the gross and net income standards of the FS program. The main issue is whether Respondent correctly calculated Mr. U.’s entitlement to FS benefits.

The applicable regulations, §§ 273.09 and 273.10, require the following calculations of FS benefits:

- (1) Determine the amount of all monthly earned and unearned income. Support payments or rent receipts are included as unearned income. § 273.9(b)(2). Self-employment gross income is included as earned income.

² As of October 1, 2008, the FS program is now renamed the “Supplemental Nutritional Assistance Program (SNAP)” at the federal level. However, the States, including the District, are free to continue to use another name for the program, including the “FS program.”

§ 273.9(b)(1)(ii). For earned income, deduct 20% as an earned income deduction. § 273.9(d)(2);

- (2) Subtract the standard deduction, listed on the USDA website as \$144 for a household of one to three persons, from the total income. § 273.9(d)(1).
- (3) Subtract other deductions. For excess medical deduction, consider that portion of medical expenses in excess of \$35 per month. § 273.9(d)(3). For excess shelter deductions (other than homeless shelter), the applicant is entitled to the difference between one-half of the net income after other deductions, and the actual shelter cost. § 273.9(d)(6)(ii). A State, including the District may develop standard utility allowances, as Respondent has done here. § 273.9(d)(6)(iii).
- (4) Subtract 30% of the net income remaining from the maximum FS allotment for a household of that size, to determine the allotment amount. § 273.10(e)(2)(ii)(A)(1).

As the Findings of Fact show, Respondent made one minor error in applying these calculations to Mr. U.'s case, because Respondent used a standard deduction of \$141, rather than \$144. This error resulted in an underpayment of FS benefits to Mr. U. of \$1 per month, based on the information presented to Respondent.

I will now address Mr. U.'s arguments.

Mr. U. claims: (1) Respondent miscalculated his personal income from self-employment in determining his FS eligibility; (2) Respondent failed to consider certain personal expenses as

“excess shelter expenses”; (3) Respondent failed to grant him any FS benefits for the month of October 2009; (4) for the subsequent months beginning November 2009, Respondent failed to grant him the full amount of \$200 in FS benefits to which he was entitled; and (5) Respondent failed to consider Mr. U.’s actual needs for FS benefits, and that ultimately Respondent should have granted him an allotment of FS benefits over the maximum benefit amount.

(1) Respondent’s Determination of Self-Employment Income

Mr. U. contests Respondent’s conclusion that he received \$204 per month in self-employment gross income (gross income to himself, but net income after expenses to his business enterprise). However, as Mr. Walker notes, Respondent relied on a statement written and signed by Mr. U. himself.

Under §§ 273.11(a)(1) and 273.11(a)(2), Respondent is required to determine an applicant’s monthly self-employment income by averaging the amounts received either over the entire year, or if the business has existed less than one year, over the period of the business’s existence. Section 273.11 contains extensive rules about the types of costs and losses that may be deducted from income.

I conclude that, in the absence of any other information, Respondent had no choice but to rely upon Mr. U.’s self-report of his monthly income from self-employment. Mr. U. cannot reasonably complain about this determination, when he supplied the amount that Respondent relied upon.

Mr. U.’s 2009 federal income tax return obviously was not available to Respondent to consider in October 2009. Respondent committed no error in not considering this information.

Nevertheless, Mr. U.'s additional information, contained in his 2009 tax return, may be considered as a change in circumstances. Under § 273.12(a)(1)(i)(C)(2), Mr. U. is required to report, and Respondent is required to consider, a change in the amount of earned income of more than \$100 a month. Even when Respondent has not requested a periodic report, Respondent is required to act on any change that would increase a household's benefits. § 273.12(a)(5)(vi)(B).

Since there are many questions about what losses have been deducted from Mr. U.'s gross receipts to arrive at the figure of \$73 annual income from self employment, I am unable to calculate Mr. U.'s entitlement to FS benefits based on his income tax return alone.

It will be necessary to remand this case to Respondent to recalculate Mr. U.'s FS eligibility based on the new information. Respondent must consider any additional information Mr. U. provides, so that Respondent may apply the proper FS program deductions from self-employment income listed in § 273.11.

Since Mr. U. did not provide this information until January 21, 2010, I will order Respondent to recalculate Mr. U.'s FS benefits beginning February 1, 2010.

(2) Excess Shelter Costs

Mr. U. contends that Respondent did not allow all of his shelter expenses, when it calculated his FS eligibility. He makes two points: (1) he had other living expenses in addition to rent and utilities costs that should be considered; and (2) he is entitled to full credit for all his shelter costs. Both points are without merit.

The FS regulation only allows certain types of expenses to be included as "shelter expenses." *See* § 273.9(d)(6)(ii). Personal living expenses that Mr. U. incurred may not be considered, even though they were certainly real expenses for Mr. U. Further, the regulations

only allow a portion of the shelter expenses to be deducted from income in determining FS eligibility. If Mr. U.'s total shelter expenses exceeded one-half of his income after applying all deductions from income applicable to that point, he would be entitled to an "excess shelter cost deduction" for any amount over that one-half threshold. Since Mr. U.'s total shelter expenses were zero, they did not reach the threshold amount. He was not entitled to any deduction for "excess shelter costs."

(3) No FS Benefits for October 2009

Mr. U. claims that Respondent erred when it issued no FS benefits for October 2009. I disagree.

Federal regulations require Respondent to prorate FS benefits for the month of application based on the date when the application was filed. § 273.10(a)(1)(ii). If Respondent determines that the prorated FS benefit amount is less than \$10, no FS benefits are issued for that month. § 273.10(a)(1)(ii)(C).

As the Findings of Fact show, even if Respondent had applied the correct standard deduction of \$144 for Mr. U., his prorated benefits for October 2009 still did not meet the \$10 threshold. Respondent did not err in refusing to issue FS benefits for October 2009.

(4) Full FS Benefits for Months Beginning November 2009

Mr. U. argues that he was entitled to the maximum allotment of \$200 for a household of one person. As shown in the Findings of Fact, and the Discussion above concerning the requirements of §§ 273.9 and 273.10, Mr. U. was not entitled to the full benefits of \$200. Respondent correctly calculated his FS eligibility, except for the minor error of using the wrong standard deduction.

Mr. U. in effect uses information that may be contained in his 2009 tax return. However, as noted above, Mr. U. did not provide this information to Respondent until late January 2010.

(5) FS Benefits Above the Maximum Allotment

Mr. U. finally asserts that he should have been granted FS benefits in excess of the maximum allotment, for two reasons: First, he needs more money for food than the FS program grants. Second, he had business losses, and Respondent should be required to supplement his FS benefits to compensate for these losses. There is no merit to this argument.

The USDA establishes program standards for the FS program. Each October 1, the USDA establishes the maximum allotment based on the federal poverty figures. For this year, Mr. U. has benefitted from the inclusion of economic stimulus funds that have increased the maximum allotments under the FS program.

Respondent has no authority to exceed the program limits of the FS program. Respondent must apply the standards published by the USDA, and to apply the income calculations required under §§ 273.9 and 273.10.

SUMMARY OF CONCLUSIONS

In summary, I conclude that Respondent made a minor error in calculating Mr. U.'s FS eligibility, beginning with November 1, 2009. Respondent applied the wrong standard deduction (\$141 versus the correct amount of \$144). Consequently, Respondent should have issued monthly FS benefits of \$29, instead of \$28.

I further conclude that, as of January 21, 2010, Mr. U. has presented additional information showing a change in circumstances in his household. Mr. U.'s earned income amount is most likely more than \$100 less than the amount that was used in his FS eligibility

calculations. Therefore, I will remand this case to Respondent to recalculate Mr. U.'s FS eligibility as of February 1, 2010, in light of this information.

Mr. U.'s other arguments are without merit.

V. Order

Therefore, upon the foregoing findings of fact and conclusions of law, it is this _____ day of _____ 2010:

ORDERED, that Respondent's October 28, 2009 Notice awarding Mr. U. FS benefits of \$28 per month, beginning November 1, 2009, is **AFFIRMED IN PART AND REVERSED AND REMANDED IN PART**; and it is further

ORDERED, that, within **FIFTEEN (15) DAYS** following the issuance date of this Order, Respondent shall issue total FS benefits of \$3, representing allotments of \$29 per month, rather than \$28 per month, for the months of November 2009, December 2009, and January 2010; and it is further

ORDERED, that, within **FIFTEEN (15) DAYS** following the issuance date of this Order, Respondent shall recalculate Mr. U.'s FS eligibility beginning February 1, 2010, after considering Mr. U.'s 2009 federal income tax return, and any additional information he provides. Respondent shall issue a new notice advising Mr. U. of its decision and his right to request a hearing. If Mr. U. is dissatisfied with the new decision, he may file a timely hearing request to seek review of the decision; and it is further

ORDERED, that, since this case is being remanded for further action, no appeal rights are listed with this Order.

/s/ February 12, 2010

Paul B. Handy
Administrative Law Judge

